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## PENCE TESTIFIES IN FAVOR OF REGULATORY FLEX ACT FOR SMALL BUSINESS

**Washington, May 5, 2004** - Washington, D.C.- Congressman Mike Pence testified today in favor of the Regulatory Flexibility Improvements Act to protect small businesses from regulatory over-reach. Pence's testimony came in the Subcommittee on Regulatory Reform and Oversight, a panel he chaired as part of the Small Business Committee when he was a freshman.

The bill will help strengthen the Regulatory Flexibility Act (RFA) in order to take a regulatory burden off small businesses.

"Passing this bill will close significant loopholes in how small businesses are regulated," said Pence. "Leaving interpretation of small business regulation to the whims of different administrations undercuts the ability of small businesses to function in a profitable way.

"This bill will assist the executive branch of government in enforcing the RFA by making the law tougher," said Pence.

Specifically, the bill would:

- Define economic impact to include foreseeable indirect economic impacts
- Expand the scope of applicability of the RFA to IRS actions that impose record keeping requirements
- Require agencies to estimate the cumulative economic impact of a proposed rule on small entities
- Expand the current panel process to CMS, IRS and FCC

Statement of Mike Pence  
Before the  
Committee on Small Business

United States House of Representatives  
Washington, DC  
May 5, 2004

Thank you, Chairman Manzullo for inviting me to testify. I had the pleasure of serving you and America's small businesses for two years as Chairman of the Subcommittee on Regulatory Reform and Oversight. It is appropriate that I return to this Committee room to testify on a bill that I chose to cosponsor - H.R. 2345, the Regulatory Flexibility Improvements Act.

During my tenure as a Subcommittee Chairman, I held a number of hearings and one very comprehensive roundtable on the regulatory burdens facing small businesses. Every trade association and group had different concerns because of the agencies that regulated their members' businesses. Yet, almost all the witnesses that came before the Subcommittee expressed two consistent themes. First, small businesses faced problems complying with complex, often arcane federal regulations that they are unaware of until a federal inspector comes through the door. Second, the analyses done in support of regulations often were inadequate and did not focus on the problems facing small businesses.

Certainly much has changed since I became Chairman of the Subcommittee on Regulatory Reform and Oversight. President Bush declared that it was the policy of his Administration that federal agencies were no longer to ignore compliance with the Regulatory Flexibility Act. Dr. John Graham, the head of the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget has done a remarkable job with a small staff in revamping review of regulations and demanding sound scientific and economic support for regulations. Tom Sullivan has been admirable advocate on behalf of small businesses and from my, albeit distant, perch is working closely with Dr. Graham in ensuring that federal agencies comply with the Regulatory Flexibility Act (RFA).

Given the success of this Administration in imposing a significant degree of rationality in the issuance of regulations, why is it necessary to enact H.R. 2345? First, Congress continues to enact legislation that will require regulations, such as the prescription drug benefit for Medicare-eligible individuals. Second, administrations come and go and so do the people that staff them. The replacements may not be as qualified or as dedicated or may have different agendas based on that President's policies. Third, political appointees come and go but most agency personnel remain and they may not be as committed to compliance with the RFA. Fourth, court interpretations of the Regulatory Flexibility Act are unchanged by the actions of the Executive Branch and agency personnel will use those interpretations to avoid performing the analyses that Congress mandated. At bottom, the United States distinguishes itself from other nations because it operates under the rule of law in which the actions of federal agencies are subject to significant public scrutiny and challenge in the courts. Leaving compliance with the RFA to the whims of federal agency personnel undermines the basic principle that this country is one of rule by law not people.

Even if Dr. Graham and Mr. Sullivan do their jobs flawlessly, the RFA itself has flaws. Courts have identified those flaws and agencies will exploit those loopholes to avoid performing analyses that might undercut the rationale for their predetermined regulatory outcomes. That is

simply unacceptable. [ Chris, note: I can put in here a regulatory example or two if Mr. Pence thinks its appropriate]

In evaluating actions that adversely affect the environment, federal agencies first study the scope of any adverse actions, the consequences of taking an action, and alternatives to the proposed action. Agencies should take the same rational approach when promulgating regulations. Before even putting pen to paper, the agency should determine whether a problem exists, the scope of the problem, and potential regulatory alternatives. The RFA can, if all the loopholes are closed, play a key role in this rational rulemaking process.

The President has said compliance with the RFA is important and the only way to ensure that compliance really occurs under this President and in future administrations is to make the law tougher. For these reasons, I determined that cosponsorship of H.R. 2345 is important and support your efforts to move the bill, enact into law, and protect America's small businesses.

Again let me thank, you, Mr. Chairman, for the opportunity to testify. As a member of the Judiciary Committee, which also has jurisdiction on this legislation, I look forward to assisting your efforts in moving this important legislation.

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